CHAPTER 2 PRIVATE SECTOR WORKERS' COMPENSATION PROGRAM

200 GENERAL PROVISIONS

200.1 The provisions of this chapter are promulgated to implement the District of Columbia Workers' Compensation Act of 1979, as amended, (D.C. Law 3-77, effective July 1, 1980; §36-301 et seq. D.C. Code, 1981 ed.).

200.2 The Mayor is authorized under §3(a) of the Act [§36-302(a), D.C. Code, 1981 ed.], to promulgate rules and regulations as may be necessary to administer the Act.

200.3 The Director, under Mayor's Order No. 82-126, effective June 24, 1982) is delegated the authority to administer the Act.

200.4 The rights of interested parties under the Act shall not be affected by any action or inaction of the Mayor or his or her agents except by issuance of a compensation or other order under the Act and §225 of this chapter.

201 APPLICABILITY

201.1 The Act is applicable to injuries which occur on or after July 26, 1982 to employees of employers whose employment is principally localized in the District of Columbia in accordance with §4(a) of the Act [§36-303(a), D.C. Code, 1981 ed.].

201.2 An employer shall be liable for compensation under the Act regardless of the place where the injury occurs in accordance with §4(b) of the Act [§36-303(b), D.C. Code, 1981 ed.]

201.3 An employer shall be liable for compensation under the Act regardless of fault as to the cause of injury or death in accordance with §4(b) of the Act [§36-303(b), D.C. Code, 1981 ed.].

201.4 An employer who subcontracts with another is liable for compensation to employees of the subcontractor unless the subcontractor secures payment in accordance with §4(c) of the Act [§36-303(c), D.C. Code, 1981 ed.].

201.5 The Act provides the exclusive remedy for covered injuries if an employer has secured payment of compensation as provided in §§4 and 5 of the Act [§36-303 and §36-304, D.C. Code, 1981 ed.]

202 FORMS

202.1 Any notices, claims, reports, requests, applications, or certificates that the Act or this chapter requires to be made shall be on forms prescribed by the Office or in a manner prescribed by the Office; except that, the Office may excuse the failure to use a prescribed form for good cause shown.

202.2 All costs for prescribed forms shall be incurred by the carrier and the employer; except that, the Office shall incure the cost of the first set of prescribed forms which will be disseminated to employers, employees, and carriers.

202.3 All prescribed forms shall be obtainable from the carrier or the employer upon request by the employee or the employee's representative.

202.4 The Office may permit the use of substitute forms after determining, upon written request, that the substitute forms will contain the same information and service the same purpose as a prescribed form.

203 EMPLOYER'S REPORT OF INJURY

203.1 Under §33(a) of the Act [§36-332(a), D.C. Code, 1981 ed.], all employers shall give a written report of every employee's injury or death to the Office within ten (10) working days of the injury or death.

203.2 Under §33(e) of the Act [§36-332(e), D.C. Code, 1981 ed.], failure to provide a Report of Injury shall subject an employer to a civil penalty up to one thousand dollars ($1,000) for each failure.

203.3 Under §33(f) of the Act [§36-332(f), D.C. Code, 1981 ed.], the time limit for filing a claim shall not begin until a Report of Injury is filed.

203.4 The Report of Injury shall contain the following:

(a) The name, address, phone number and business of the employer;

(b) The name, address, phone number and occupation of the employee;

(c) The date, time, and place of the injury;

(d) The nature of the injury;

(e) The cause of the injury;

203 EMPLOYER'S REPORT OF INJURY (Continued)

203.4 (Continued)

(f) Whether the injury is expected to result in lost time or no lost time;

(g) The name of any known witnessess and other relevant circumstances; and

(h) Any other information that the Office may require.

203.5 The Employer's Report of Injury may be hand delivered or mailed to the Office within the prescribed ten (10) working days.

204 EMPLOYER RECORDS OF INJURIES

204.1 Under §32 of the Act [§36-331, D.C. Code, 1981 ed.], each employer shall maintain a record of all injuries to its employees.

204.2 Employer records of injuries shall be available for inspection by a representative of the Office during an employer's regular business hours at the employer's place of business.

204.3 Employer records of injuries shall be adequate if they contain the information set forth in §203.4 of this Chapter.

205 NOTICE OF RIGHTS AND OBLIGATIONS/ASSISTANCE

205.1 Under §33(g) of the Act [§36-332(g), D.C. Code, 1981 ed.], the Office shall notify an injured employee of his or her rights and obligations under the Act upon receipt of the employer's Report of Injury.

205.2 The Office shall, upon request, provide employees and employers subject to the Act with information and assistance relating to the Act's coverage and compensation and the procedure for obtaining the compensation including assistance in processing a claim through the Office.

205.3 The Office shall promptly and fully comply with the request of a claimant receiving compensation for information about and assistance in obtaining medical and vocational rehabilitation services.

205.4 Under §37 of the Act [§36-336, D.C. Code, 1981 ed.], employers shall conspicuously post for employees information regarding the Act and their insurance coverage thereunder.

206 EMPLOYEE'S NOTICE OF INJURY

206.1 Under §14 of the Act [§36-313, D.C. Code, 1981 ed.], written Notice of Injury shall be given to the Office and the employer by an employee or beneficiary within thirty (30) days of the injury or within thirty (30) days of awareness of the relationship between the employment and the injury.

206.2 Notice of Injury shall be made on a form prescribed by the Office and shall contain the following:

(a) The name and address of the employer and of the employee;

(b) The date, approximate time, and place of the injury;

(c) The nature of injury;

(d) The cause of the injury;

(e) The name of any known witnesses and other relevant circumstances;

(f) The signature of the employee, the authorized representative, or the beneficiary;

(g) Whether medical treatment has been obtained and from whom; and

(h) Any other information the Office deems necessary.

206.3 Notice of Injury may be hand delivered or mailed to the Office and to the employer.

206.4 Notice to an employer who is a partnership shall be sufficient if given to any general partner or agent of the partnership.

206.5 Notice to an employer who is a corporation shall be sufficient if given to any agent or officer of the corporation authorized to receive legal process or to any person in charge of the business of the corporation in the place where the injury occurred.

206.6 The failure of an employee or beneficiary to give timely Notice of Injury shall not bar a claim for compensation if the following occurs:

(a) The employer, an agent in charge of the business in the place where the injury occurred, or the carrier knew of the injury and its relationship to the employment and the Office determines that no prejudice has resulted from the failure; or

206.6 (Continued)

(b) The Office excuses the failure upon determining that a satisfactory reason exists why timely Notice of Injury was not given; or

(c) Objection to the failure is not raised at any time during the first hearing on the claim as defined in §299 of this chapter.

206.7 In determining when an employee or beneficiary became aware or should have been aware of the relationship between the injury and the employment, the Office shall consider all the facts and circumstances of the individual case.

206.8 In determining when an employer or carrier had knowledge of an injury and its relationship to the employment, the Office shall consider, among other factors, the following:

(a) The place where the injury occurred;

(b) The time the injury occurred;

(c) Actual notification by the employee to an official of the company or the employee's designee;

(d) Whether the employer provided medical treatment; and

(e) The time when the injury was reported.

206.9 In determining whether the employer or carrier has been prejudiced by the failure of the employee or beneficiary to give Notice of Injury, the Office shall consider, among other factors, the following:

(a) The length of time between the injury and the filing of the claim;

(b) Whether the employer was able to investigate the injury or illness at the time it occurred;

(c) Whether the failure to give notice has adversely affected the employer's ability to prepare its defense; and

(d) Whether the delay prevented the employer from providing medical treatment.

207 CLAIMS APPLICATION

207.1 In accordance with §15 of the Act [§36-314, D.C. Code, 1981 ed.], all claims shall be made by injured employees or their beneficiaries in writing within one (1) year of the injury or death, except as hereafter provided.

207.2 A claim may be made within one (1) year after the date of the last payment if voluntary payments have been made.

207.3 A claim may be made within one (1) year after the employee or beneficiary is aware of the relationship between the injury or death and the employment.

207.4 A claim may be made within one (1) year from the end of a suit to recover damages where recovery is denied because the Act provides the exclusive remedy for the injury.

207.5 In accordance with §15(b) of the Act [§36-314(b), D.C. Code, 1981 ed.], the failure of an employee or beneficiary to file a claim within one (1) year after the injury or death shall not bar a claim unless objection to the failure is made at any time during the first hearing on the claim as defined in §299 of this chapter.

207.6 In accordance with §15(c) of the Act [§36-314(c), D.C. Code, 1981 ed.], a claim may be made on behalf of a person who is mentally incompetent within one (1) year from the date of appointment of a guardian or authorized representative.

207.7 A claim may be made by a minor within one (1) year from the date of majority or on behalf of a minor by his or her guardian or authorized representative within one (1) year from appointment.

207.8 In accordance with §33(f) of the Act [§36-332(f), D.C. Code, 1981 ed.] a claim may be made within one (1) year from the date the employer's Report of Injury is filed with the Office.

207.9 Upon receipt of a Claims Application, the Office shall issue a written notice to all interested parties in accordance with §21(b) of the Act [§36-320(b), D.C. Code, 1981 ed.].

208 OFFICIAL RECORD

208.1 The Office shall maintain an official record of each claim.

208.2 The official record shall include all medical records and investigative reports relating to the claim.

208 OFFICIAL RECORD (Continued)

208.3 The official record shall include all correspondence to the Office concerning the hearing, testimony and exhibits in evidence before a hearing or Attorney Examiner, as well as the stenographic record required by by §26(b) of the Act [§36-325(b), D.C. Code, 1981 ed.].

208.4 The official record shall contain all notices required to be filed by the Act or this chapter.

208.5 Upon request, interested parties shall be permitted to examine at the Office the official record of the claim to which they are an interested party.

208.6 A written record shall be maintained by the Office of all requests to examine the official record of a claim.

208.7 Interested parties may request copies of any document in the official record. The Office shall provide copies of the documents, and the cost shall be borne by the requestor.

209 VOLUNTARY PAYMENT OF COMPENSATION

209.1 Under §16(a) of the Act [§36-315(a), D.C. Code, 1981 ed.], compensation shall be paid directly to an employee or beneficiary by the insurer on behalf of the employer without an award unless the employer controverts in writing, on a form prescribed by the Office, the liability to pay under §16(d) of the Act [§36-315(d), D.C. Code, 1981 ed.] and §210 of this chapter.

209.2 The first voluntary payment of compensation shall be made within fourteen (14) working days after the employer has knowledge of the injury.

209.3 Compensation shall be paid promptly every two (2) weeks thereafter.

209.4 The insurer shall file Memo of Payment with the Office upon making the initial voluntary payment.

209.5 The insurer shall file Notice of Controversion with the Office upon stopping payment for any reason no later than three (3) working days after the payments are suspended.

209.6 The Notice of Controversion shall contain the information required by §210.3 of this chapter.

209.7 If final payment of compensation is the reason for stopping payment, Notice of Final Payment shall be filed by the insurer with the Office within sixteen (16) working days, in lieu of Notice of Controversion.

209.8 The Notice of Final Payment shall contain the following:

(a) The name of the employee and of the employer;

(b) The date of the injury;

(c) The total amount of compensation paid;

(d) The person to whom payments were made;

(e) The date of the first payment;

(f) The date to which the final payment has been made; and

(g) Any other information required by the Office.

209.9 To the extent possible, the Office shall monitor voluntary payments to ensure that the amount paid is proper.

209.10 The Office may, on its own initiative and shall upon written request of an injured employee, determine if a ten percent (10%) penalty for late payment under §16(e) of the Act [§36-315(e), D.C. Code, 1981 ed.] shall be imposed or if nonpayment shall be excused.

210 CONTROVERTED CLAIMS

210.1 Under §16(d) of the Act [§36-315(d), D.C. Code, 1981 ed.], an employer may controvert liability to pay benefits in accordance with §§9 and 10 of the Act [§36-308 and 36-309, D.C. Code, 1981 ed.].

210.2 If the right to compensation is disputed, an employer shall file Notice of Controversion with the Office on or before the fourteenth (14th) working day after the employer has knowledge of the injury and its relationship to the employment.

210.3 The Notice of Controversion shall contain the following:

(a) The name of the employee;

(b) The name of the employer;

(c) The date of the injury;

(d) A statement that the right to compensation is controverted;

210 CONTROVERTED CLAIMS (Continued

210.3 (Continued)

(e) The grounds upon which the right to compensation is controverted;

(f) The name and address of the employer's representative and insurance carrier; and

(g) Any other information required by the Office.

210.4 At the time the employer files a Notice of Controversion with the Office, a copy shall be sent by certified mail, return receipt requested to the employee at the last known place of residence and to the employee's representative, if applicable.

211 INVESTIGATION OF CLAIMS

211.1 Under §21(c) of the Act [§36-320(c), D.C. Code, 1981 ed.], the Office shall conduct the investigation of claims as is necessary to determine all questions concerning a claim including, but not limited to, the following:

(a) The fact and degree of disability;

(b) Whether the claimant is entitled to compensation;

(c) Whether adequate medical care has been provided;

(d) Whether adequate vocational rehabilitation has been provided;

(e) The necessity, character, and sufficiency of any medical aid furnished;

(f) The amount of compensation due an injured employee; and

(g) Whether a change in condition has occurred sufficient to justify a review of a previously rendered compensation order.

211.2 The Office may utilize as part of its investigation non-adjudicative fact finding procedures including informal conferences under §219 of this chapter to narrow issues, encourage voluntary payment of claims, and encourage agreement between interested parties.

212 MEDICAL SERVICES AND SUPPLIES

212.1 Under §8(a) of the Act [§36-307(a), D.C. Code, 1981], the employer of an injured employee shall furnish medical services and supplies for that period of time as the nature of the injury or the process of recovery may require.

212.2 Under §8(b)(3) of the Act [§36-307(b)(3), D.C. Code, 1981 ed.], an injured employee shall have the right to select an attending physician from the physicians' panel established under §8(b)(1) of the Act [§36-307(b)(1) and §213 of this chapter.

212.3 If an injured employee is unable because of injury to select a physician, the employer may choose a physician from the panel to treat the employee.

212.4 The physician shall file an initial medical report with the Office and the employer containing a diagnosis and prognosis within twenty (20) working days of treatment in accordance with §8(d) of the Act [§36-307(d), D.C. Code, 1981 ed.]

212.5 Any physician who continues to treat an injured employee shall provide progress reports periodically to the Office and the employer on the employee's condition as circumstances warrant or on request of the Office.

212.6 Physicians providing treatment under the Act shall submit bills to insurers in a timely and accurate manner as the Office may prescribe. Any doctor who has properly submitted a bill who is not paid in a timely fashion can make a complaint to the Office.

212.7 Upon receiving a complaint regarding payment delinquencies, the Office shall investigate the complaint and attempt to resolve it.

212.8 In no event shall a physician attempt to collect a disputed bill for medical services provided pursuant to the Act from the claimant or beneficiary prior to a final determination by the Office that the insurer is not liable to pay the bill.

212.9 In the case of a continuing dispute between a physician and an insurer over the payment of a medical bill, the Office shall determine whether the insurer is liable to pay the bill.

212.10 If the Office determines that the insurer is not liable to pay the disputed medical bill, the claimant or beneficiary may object to the determination by requesting a hearing on the matter. If the Office determines that the insurer is liable, the insurer may object to the determination by requesting a hearing on the matter.

212.11 To the maximum extent feasible, any hearing regarding a disputed medical bill shall be consolidated with the hearing regarding other issues in dispute regarding a particular claim.

212.12 The insurer may require a medical report from a treating physician to substantiate payment of bills. The report may be submitted on a form prescribed by the Office or may be typewritten on the physician's letterhead, signed and dated by the attending physician.

212.13 Once a physician or hospital authorized to provided treatment under the Act is chosen, an injured employee shall not change from one (1) physician to another or from one (1) hospital to another, without authorization of the insurer.

212.14 If the employee is not satisfied with medical care, a request for change may be made to the Office. The Office may order a change where it is found to be in the best interest of the employee.

212.15 Notwithstanding §212.13 of this chapter, the Office may make special appointments to the panel of physicians authorized to provide treatment under the Act in accordance with §213.9 of this chapter.

212.16 There shall be no fee schedule for treatment under the Act. Fees and other charges for treatment or medical services shall be limited to those that are reasonable and customary charges prevailing in the local medical community. The Office shall determine what fees are reasonable and customary in the local medical community after consulting the Medical Review Board on any disputed fees.

212.17 Under §16(h) of the Act [§36-315(h), D.C. Code, 1981 ed.] and §21(f) of the Act [§36-320(f), D.C. Code, 1981 ed.], the Office may require an injured employee to submit to physical examinations at times and places reasonably convenient for the employee.

212.18 In determining convenience of place of examination, the Office shall consider the following:

(a) The distance to be traveled;

(b) The physical condition of the employee; and

(c) The various modes of transportation available to the employee.

212.19 The cost of physical examinations ordered by the Office shall be paid by the insurer unless a determination is made by the Office that the cost is appropriately charged to the special fund.

213 MEDICAL REVIEW BOARD AND PHYSICIANS' PANEL

213.1 The Office shall appoint a Medical Review Board consisting of seven (7) physicians, five (5) of whom shall be members and two (2) of whom shall be alternates.

213.2 The five (5) members shall include three (3) non-panel physicians and two (2) panel physicians. The two (2) alternates shall replace the two (2) panel physicians in specific instances where panel physicians would otherwise decide a matter directly involving their own treatment of an injured employee.

213.3 The Medical Review Board shall make recommendations to the Office on all medically related matters, and the Office shall make a final determination to approve or disapprove the recommendations.

213.4 Under §8(b)(1) of the Act [§36-307(b)(1), D.C. Code, 1981 ed.] , the Office shall establish an application season for physicians to apply for appointment to the panel. The application season shall be announced in advance to provide ample opportunity to apply.

213.5 The applications for appointment to the physicians' panel shall be screened by the Medical Review Board who will recommend to the Office the appointment of specific physicians who should be authorized to provide treatment under the Act based on criteria established by the Medical Review Board.

213.6 The Office shall appoint a panel of physicians authorized to provide treatment under the Act based upon recommendations of the Medical Review Board.

213.7 Members of the panel of physicians shall be appointed for two (2) year terms, unless subsequently removed for good cause as recommended by the Medical Review Board and approved by the Office.

213.8 Removal for good cause may be based upon the following:

(a) Conviction for a felony;

(b) Loss of license to practice medicine;

(c) Loss of hospital privileges previously granted;

(d) Refusal to provide reports in a timely manner; and

(e) Other causes as may be recommended by the Medical Review Board.

213 MEDICAL REVIEW BOARD AND PHYSICIANS' PANEL (Continued)

213.9 Under §8(b)(2) of the Act [§36-307(b)(2), 1981 ed.], the Office may, on its own initiative or at the request of an employee or employer, make special appointments to the physicians' panel for medical emergencies to do the following:

(a) To accommodate special medical needs; or

(b) To provide follow-up treatment by a conveniently located physician for an employee who lives outside the Washington, D.C. Standard Metropolitan Statistical Area.

213.10 All special appointments to the physicians's panel shall be made in the manner prescribed by the Office.

214 INSURANCE COVERAGE

214.1 The provisions of this section set forth the policies and procedures which apply to the administration and enforcement of the coverage provisions of the Act.

214.2 Under §35 of the Act [§36-334, D.C. Code, 1981 ed.], all employers subject to the Act shall secure the payment of compensation for their employees.

214.3 The Office shall prescribe standardized forms to be utilized by employers and insurers.

214.4 Employers and insurers shall provide the Department with all information required to determine the availability of and the adequacy of insurance coverage.

214.5 Employers shall exercise their responsibility to secure the payment of compensation for their employees by maintaining insurance coverage; Provided, that an employer may apply for authorization to be a self-insurer as set forth in §217 of this Chapter.

214.6 The duty to maintain insurance coverage shall continue until such time as an employer actually qualifies as a self-insurer.

214.7 New employers shall obtain coverage prior to hiring any employee.

214.8 After an employer has made a bona fide application for coverage which has been accepted on behalf of a carrier, carriers shall share in coverage responsibility.

214.9 A bona fide application for coverage may be verbal or written.

214 INSURANCE COVERAGE (Continued)

214.10 Carrier responsibility for coverage shall extend until coverage is actually provided the employer.

214.11 Notice of coverage provided an employer shall be given to the Office by insurers.

214.12 Notice of termination shall be given to the Office by insurers.

214.13 Upon receipt of a valid termination notice from a carrier, the employer has the responsibility to apply for and obtain new coverage.

214.14 Agencies or carriers who refuse to provide coverage on a voluntary basis shall advise the employer concerning the availability of coverage under the existing Workers' Compensation Insurance Plan of the National Council on Compensation Insurance and provide the application form to the employer.

214.15 The Council shall provide the Office with the following information:

(a) A copy of the assignment letter;

(b) A copy of the letter relieving carrier of assignment;

(c) Annually, the total number of new assignments, total number of renewals, and estimated total premium dollars; and

(d) Any other information that the Office may require.

215 EVIDENCE OF COVERAGE

215.1 Carriers shall provide the Office with evidence of coverage by filing a completed Notice of Workers' Compensation Coverage as soon as possible after completion of arrangements to provide coverage, but no later than ten (10) working days after date of binder issued in the Mid-Atlantic Council region.

215.2 An additional period of time not to exceed thirty (30) working days may be granted to carriers filing a Notice of Coverage where a binder has been issued in another jurisdiction.

215.3 Coverage shall become effective by the date indicated on the notice, which is the date on which a carrier becomes legally bound as to a risk.

215.4 Notice shall be given in terms of coverage, not policy.

215 EVIDENCE OF COVERAGE (Continued)

215.5 No notice shall be filed upon rewriting or renewal; except that, a notice shall be filed with the Office in the following circumstances:

(a) Upon insuring an establishment with no prior coverage in the District of Columbia.

(b) Upon rewriting the terms;

(c) Upon reinstatement;

(d) Upon substitution of carrier; and

(e) Upon change of name of the employer.

215.6 The reason for notice shall be correctly indicated on the notice. Notice shall be filed on the prescribed form and defect as to form or contents shall render filing invalid, except as to coverage.

215.7 Carriers desiring acknowledgement of filing of notice with the Office shall request return of receipt of certified mail from the U.S. Postal Service.

215.8 Agencies desiring a copy of notice shall be accommodated upon request.

215.9 Notice of ordinary coverage applicable to an employer who has two (2) or more establishments or job sites (Construction) in the District of Columbia shall be made on Supplemental Notice of Information form with respect to the parent company or home office, whether in or out of the District of Columbia, and shall be filed with the Office within sixty (60) days of coverage.

216 TERMINATION OF COVERAGE

216.1 Termination of coverage shall be accomplished in the manner provided by §39(b) of the Act [§36-338(b), D.C. Code, 1981 ed.] and this section.

216.2 Carriers shall notify the Office whenever they intend to cease providing coverage to an employer on the Termination Notice.

216.3 Carriers shall file by certified mail, return receipt requested. The receipt shall identify the establishment whose coverage shall be subject to termination.

216.4 Carriers shall serve a copy of the Termination Notice upon the employer when termination is for one (1) of the following reasons:

(a) Request of carrier or agency;

(b) No employees; or

(c) Change of carrier.

216.5 No termination shall take effect prior to thirty (30) days after the date of filing Termination Notice with the Office.

216.6 Notice of termination refers to coverage, not policies. Therefore, no notice shall be filed with the Office in the absence of a bona fide intent to terminate coverage.

216.7 Carriers, upon filing Termination Notice, shall retain the copy labeled "Reinstatement" in their file. If at a later date they reinstate coverage they shall file this Reinstatement Notice with the Office.

216.8 The reason for termination of coverage shall be indicated on the form as follows:

(a) The term **"Change of Carrier"** means the substitution of one (1) carrier for another at the option of an agent or insured;

(b) The term **"Out of Business"** means the definitive conclusion of the operation of an establishment, including the activities required to close down;

(c) The term **"Business Sold"** means the substitution of one (1) employer for another by reason of change in ownership;

(d) The term **"No Employees"** means the discharge of all employees;

(e) The term **"Non-Payment of Premium"** means the absence of full payment of premium by covered employer; except that, the term does not apply to an employer no longer in business; and

(f) The term **"Request of Carrier and/or Agency,"** means a termination which serves the purposes of a carrier or agency.

217 SELF-INSURANCE

217.1 An employer who desires to be a self-insurer may apply for authorization in accordance with this section and in the manner prescribed by the Office.

217.2 Under §35(a)(2) of the Act [§36-334(a)(2), D.C. Code, 1981 ed.], any employer who desires to be a self-insurer shall furnish satisfactory proof to the Office that he or she has met the following requirements:

(a) Secured or has sufficient financial resources to meet all obligations in regard to its potential liability under the Act;

(b) Obtained adequate excess or catastrophic loss insurance or has otherwise made adequate financial arrangements for the losses:

(c) Made adequate arrangements to provide promptly to its employees all necessary compenstion and medical care required by the Act;

(d) Made a deposit of security (negotiable securities, surety bond or other financial bond) in the amount and form prescribed by the Office; and

(e) Agreed to carry out all requirements of the Act and this chapter.

217.3 An employer who applies for the status of self-insurer shall secure the insurance coverage required by the Act until such time as authorization is issued by the Office.

217.4 Application for self-insurance shall be made in a manner prescribed by the Office and shall contain at least the following information:

(a) A statement of the amount of the employer's payroll for the preceding twelve (12) month period;

(b) A statement of the average number of employees engaged in employment within the purview of the Act, or similar provisions of prior law, in the preceding twelve (12) month period;

(c) A statement of the number and kinds of injuries to employees resulting in disability of more than three (3) days' duration, or in death, during each of the preceding three (3) years;

217.4 (Continued)

(d) An itemized statement of the assets and liabilities of the employer;

(e) A statement describing the facilities maintained or the arrangements made for the medical and hospital care of injured employees;

(f) A statement describing the provisions and maximum amount of any excess or catastrophic insurance;

(g) Signature of the applicant over the typewritten name, and if the applicant is not an individual, signature of a duly authorized officer indicating official title;

(h) Sworn oath of the applicant and, where appropriate, the corporate seal of the applicant; and

(i) A statement pertaining to the proposed processing of claims. If claims are proposed to be processed "in house", a statement shall be submitted showing the qualifications of those individuals who will process claims. If a self-insured service organization is to be used, a profile of the organization shall be submitted showing its experience in the administration of claims in general and specifically under workers' compensation laws, both state and federal.

217.5 The application shall be filed with the Office at the time and place and in the manner prescribed by the Office.

217.6 In addition to the application requirements set forth in §217.4, the Office may require an applicant for self-insurance status to submit further financial or other information as it deems necessary.

217.7 In evaluating the ability of an employer to be a self-insurer, including the amount and form of any security to be deposited with the Office, the Office shall consider the following:

(a) The financial standing of the employer;

(b) The nature of the work in which the employer is engaged;

(c) The degree of hazard to which employees are exposed;

217.7 (Continued)

(d) The amount of the employer's payroll;

(e) The provisions for excess insurance against catastrophic loss; and

(f) Any other data submitted by the applicant or required by the Office.

217.8 Annually and at any other time as the Office may require or prescribe, each self-insurer shall submit each of the following reports:

(a) A sworn itemized statement of the self-insurer's assets and liabilities, or a balance sheet;

(b) A sworn statement showing by classifications the payroll of employees of the self-insurer who are engaged in employment within the purview of the Act or similar provisions of prior law; and

(c) A sworn statement covering the preceding twelve (12) month period, listing all death and injury cases which have occurred during the period, together with a report of the status of all outstanding claims.

217.9 Whenever it is deemed necesary, the Office may, after reasonable notice, inspect or examine the books of account, records, and other papers of a self-insurer at the self-insurer's place of business for the purpose of verifying any financial statement submitted to the Office by the self-insurer or verifying any other information furnished to the Office in any report required by the Act or this chapter.

217.10 Each self-insurer shall permit the Office or its duly authorized representative to make an inspection or examination as the Office shall require. In lieu of this requirement the Office may, in its discretion, accept the report of a certified public accountant.

217.11 Applicants for self-insurance, as a condition precedent to receiving authorization to be a self-insurer, shall give security for the payment of compensation and the discharge of all other obligations under the Act in the amount and form prescribed by the Office.

217.12 The amount of security required by the Office shall be the amount that the Office deems reasonable, necessary, and sufficient to secure performance by the applicant of all obligations imposed upon an employer by the Act. Additions to the amount of security may be required at any time in the discretion of the Office.

217.13 Only surety companies approved by the Treasurer of the District of Columbia may act as sureties on any security for obligations under the Act.

217.14 Applications for self-insurance shall, as a condition precedent to receiving authorization to be a self-insurer, execute and file an undertaking in a manner prescribed by the Office.

217.15 Applicants shall agree in the undertaking to do the following;

(a) To pay when due, as required by the Act, all compensation payable on account of injury or death of any of its employees injured within the purview of the Act;

(b) To furnish where necessary, medical, surgical, hospital and other attendance, treatment, care, and vocational rehabilitation as required by the Act;

(c) To give or deposit with the Office security in the amount and form required by the Office;

(d) To authorize the Office to proceed against, sell or otherwise collect from the security if the employer fails to meet its obligations under the Act;

(e) To timely pay the appropriate share of the cost of administration of the Act; and

(f) To maintain excess insurance coverage or other catastrophic loss security as the Office shall prescribe.

217.16 No initial authorization as a self-insurer shall be granted for a period in excess of twelve (12) months and the expiration date thereof shall fall on the thirtieth (30th) day of September.

217.17 A self-insurer who has made continuing deposit of security as prescribed by the Office and who has filed the appropriate financial and other reports as required by the Office, shall be deemed to have reapplied for self-insurance for the following twelve (12) month period if the employer does not inform the Office to the contrary in writing on or before August 1, preceding the September 30th expiration date.

217.18 The Office may, for good cause shown, suspend or revoke the authorization of any self-insurer.

217.19 The occurrence of any one of the following events shall constitute good cause to suspend or revoke the authorization of a self-insurer:

(a) Failure by a self-insurer to comply with any provision or requirement of the Act or of this chapter or with any lawful order or communication of the Office;

(b) Failure or insolvency of the surety on the indemnity bond; or

(c) Impairment of financial responsibility.

217.20 A self-insurer who desires to terminate the status of a self-insurer and obtain a refund of the deposited security shall file with the Office a sworn statement indicating the following:

(a) All outstanding liabilities for compensation;

(b) All pending claims for compensation;

(c) All accidents that have occurred during the period up to three (3) years prior to the date of the statement; and

(d) Evidence of insurance coverage as required by the Act and §214 and §215 of this chapter.

217.21 The Office shall return the deposited security (or the balance thereof) to the employer only after all claims and liabilities have been ajudicated and paid or the Office determines that adequate arrangements for the payment have been made.

218 TRANSITIONAL COVERAGE

218.1 Employers who received authorization from the U.S. Department of Labor to act as self-insurers under similar provisions of prior law shall be deemed to be self-insurers under this Act without a new application for that status if the employer files with the Office on or before August 13, 1982, a sworn statment, attesting that the employer has sufficient financial resources or that the security previously deposited shall be available to satisfy claims and liabilities arising under this Act.

218 TRANSITIONAL COVERAGE (Continued)

218.2 Status as a self-insurer based upon prior law shall be valid only until September 30, 1982. Applications for self-insurance status under this Act shall be filed with the Office on or before August 13, 1982.

218.3 Carriers who are authorized by both the Superintendent of Insurance for the District of Columbia, under §35-1505, D.C. Code, 1981 and the U.S. Department of Labor to insure the risk under similar provisions of prior law shall be authorized to provide coverage under the Act to employers between July 26, 1982 and July 1, 1983.

219 INFORMAL PROCEDURES

219.1 Informal procedures may be utilized by the Office to resolve in a manner acceptable to all interested parties any matter in dispute regarding a claim.

219.2 Informal procedures may include informal conferences; Provided, that participation by interested parties in informal conferences shall be voluntary.

219.3 Unless the interested parties request an informal conference, the matter may be resolved through written communication, copies of which shall be maintained in the official record.

219.4 Interested parties shall be encourage by the Office to present their views and to discuss their positions concerning the reports and other evidence in the official record.

219.5 Informal proceedings may begin at anytime after notice of claim is served on the interested parties.

219.6 The Office shall, in the context of open discussion, utilize maximum efforts through conference, persuasion, and conciliation to eliminate any disputes and to reach a resolution acceptable to all interested parties.

219.7 Each controverted claim for compensation or medical benefits shall be investigated by the Office. The Office shall attempt to resolve disputes with respect to a claim in a manner designed to protect the rights of the interested parties at the earliest practicable date.

219.8 Informal discussions may be conducted by telephone or by informal conferences at the Office.

219.9 To the extent practicable, informal conferences shall be held with all interested parties present or represented.

219.10 The Office, when investigating claims by telephone or with only one (1) interested party present, shall ensure that a complete written report is made of all matters discussed.

219.11 Informal conferences may be scheduled by the Office upon not less than ten (10) working days' notice to all interested parties, unless the parties agree to meet at an earlier date.

219.12 The Office shall attempt to schedule the conference at the convenience of the parties after consultation with them.

219.13 Notice of informal conference may be given by telephone, but shall be confirmed in writing on a form prescribed by the Office which sets forth the date, time and place of the conference, and the matters to be discussed. For good cause shown conferences may be rescheduled.

219.14 No stenographic record shall be made of any informal procedure and no witnesses shall be called. The Office shall guide the discussion toward the recognition of areas of agreement and the achievement of resolution of disputed issues.

219.15 Informal conferences may be held at any place which, in the opinion of the Office, will be of convenience to the parties, their representatives, or the Office.

219.16 Following an informal conference at which agreement is reached on all issues, the Office shall, within ten (10) working days after conclusion of the conference, embody the agreement in a Memorandum; or within the (10) working days after conclusion of the conference the Office may issue a compensation order.

219.17 If a problem is resolved by telephone discussion or by exchange of written correspondence, the parties shall be notified in the same manner; and the Office shall prepare an order setting forth the terms agreed upon.

219.18 If at the close of an informal conference, the parties have not reached agreement on all of the disputed issues, the Office shall, in order to effectuate agreement by the parties, evaluate all the available information and prepare a Memorandum of Conference.

219.19 Copies of the Memorandum of Conference shall be sent by certified mail to the parties and their representatives.

219 INFORMAL PROCEDURES (Continued)

219.20 The parties shall have fourteen (14) days after receipt of the Memorandum of Conference within which to signify in writing whether they agree or disagree with the recommendations.

219.21 If the interested parties agree with the memorandum of Conference, the Office shall prepare an agreement to be signed by the parties or issue a compensation order reflecting the agreement within a reasonable time.

219.22 If no agreement is reached on the Office's recommmendations, either party shall have twenty (20) working days to apply for a hearing. If no hearing is requested, the Office shall issue a compensation order.

219.23 Upon timely application for hearing, the Office shall prepare and transfer the case for hearing. Under no circumstances shall there be transferred to the Hearing or Attorney Examiner any Memorandum of Conference or other documents prepared under this section.

219.24 All informal procedures shall terminate before the start of a hearing.

220 HEARINGS ON CLAIMS

220.1 Under §21(c) of the Act [§36-320(c), D.C. Code, 1981 ed.], an interested party may apply for a hearing on a claim.

220.2 Application for a hearing shall be in writing and signed by the interested party on a form prescribed by the Office.

220.3 Application for a hearing shall be filed no later than twenty (20) working days after notice of claim is received by the interested party; except that if voluntary payments have been made and a controversy subsequently develops, application for a hearing may be filed no later than twenty (20) days after the dispute develops.

220.4 Upon receipt of an application for a hearing, a hearing shall automatically be ordered in all cases by force of this section and §21(c) of the Act [§36-320(c), D.C. Code, 1981 ed.].

220.5 The hearing shall be scheduled as soon as possible, but no later than ninety (90) days from the date of application, subject to the rescheduling as the Hearing or Attorney Examiner shall order.

220 HEARINGS ON CLAIMS (Continued)

220.6 Notice of hearing shall be served by the Office on all interested parties at least ten (10) working days before the hearing is scheduled in accordance with §228.1 of this chapter.

220.7 Under §§21(a) and 21(c) of the Act [§36-320(a) and §36-320(c), D.C. Code, 1981 ed.], the Office may order a hearing on its own initiative upon a determination that a hearing is necessary for proper investigation of a claim.

220.8 A hearing shall actually be held within one hundred twenty (120) days of the application for a hearing; except that, on any claim in which testimony will be heard on questions of fact, the Office may grant a special extension for a reasonable period of time for the development of the facts.

220.9 A hearing may be ordered solely for the purpose of oral argument on legal issues.

221 HEARING OR ATTORNEY EXAMINERS

221.1 All hearings on claims shall be conducted by a Hearing or Attorney Examiner designated by the Office.

221.2 The Hearing or Attorney Examiner shall be an attorney authorized to practice law in the District of Columbia or some other jurisdiction.

221.3 The Hearing or Attorney Examiner shall have full power and authority to hear and determine all questions in respect to a claim.

221.4 The Hearing or Attorney Examiner shall conduct impartial hearings on claims in accordance with the District of Columbia Administrative Procedure Act [§1-1501 et seq., D.C. Code, 1981 ed.] and issue compensation orders in accordance with the Act and this chapter.

222 PRE-HEARING STATEMENTS

222.1 The Office shall furnish each of the interested parties or their representatives with a copy of a pre-hearing statement form.

222.2 Each party shall, within twenty-one (21) working days after receipt of the pre-hearing statement form, complete it and return it to the Office and serve copies on all other parties. Extensions of time for good cause may be granted by the Office.

222 PRE-HEARING STATEMENTS (Continued)

222.3 Upon receipt of the completed forms, the Office shall transmit the official record for a hearing.

222.4 If a party fails to complete or return the pre-hearing statement form within the time allowed, the Office shall transmit the claim without that party's form.

222.5 A party's failure to submit a pre-hearing statement or failure to raise relevant issues in the statement may result in the denial by the Hearing or Attorney Examiner of motions relevant to the issues.

223 CONDUCT OF HEARINGS

223.1 All hearings shall be attended by the parties or their representatives and any other person as the Hearing or Attorney Examiner deems necessary and proper.

223.2 If the party requesting the hearing fails to appear, the Application for Hearing shall be dismissed unless the other party objects and shows good cause why the Application should not be dismissed. If the party who has not requested the hearing fails to appear, the case shall be decided on the evidence received at the hearing. Good cause for failure to appear shall be established for any reopening of the case.

223.3 The Hearing or Attorney Examiner shall inquire fully into matters at issue and shall receive in evidence the testimony of witnesses and any documents which are relevant and material to such matters; Provided, that no Memorandum of Conference prepared under §219 of this chapter shall be admitted as evidence of disputed issues.

223.4 If the Hearing or Attorney Examiner believes that there is relevant and material evidence available which has not been presented at the hearing, the hearing may be adjourned or, at any time prior to filing of the compensation order, the hearing may be reopened for the receipt of the evidence.

223.5 The order in which evidence and allegations shall be presented and the procedures at the hearing generally, except as this chapter otherwise expressly provides, shall be in the discretion of the Hearing or Attorney Examiner and of the nature as to afford the parties a reasonable opportunity for a fair hearing.

223 CONDUCT OF HEARINGS (Continued)

223.6 All hearings shall be open to the public and shall be stenographically recorded as required by §26(b) of the Act [§36-325, D.C. Code, 1981 ed.].

223.7 It shall not be necessary for the Office to make a transcript of the stenographic record of the hearing available to interested parties until the Petition for Review of the compensation order is filed with the District of Columbia Court of Appeals in accordance with §23(b) of the Act [§36-322(b), D.C. Code, 1981 ed.] and §229 of this chapter.

223.8 Nothing in §223.6 of this chapter shall preclude the interested parties from ordering at their own expense a transcript of the hearing directly from the Office.

223.9 A transcript of the hearing shall be made available to interested parties by the Office upon certification of the official record maintained in accordance with §208 of this chapter to the District of Columbia Court of Appeals.

223.10 The Hearing or Attorney Examiner shall issue a compensation order based upon substantial evidence in the record within twenty (20) working days after the hearing is concluded in accordance with §21(c) of the Act [§36-320(c), D.C. Code, 1981 ed.].

224 ATTORNEY FEES

224.1 In accordance with §31 of the Act [§36-330, D.C. Code, 1981 ed.], this section shall govern the award of attorney fees in all proceedings under the Act.

224.2 In determining whether to award attorney fees and the amount, if any, to be awarded, the following factors shall be considered:

(a) The nature and complexity of the claim including the adversarial nature, if any, of the proceeding;

(b) The actual time spent on development and presentation of the case;

(c) The dollar amount of benefits obtained and the dollar amount of potential future benefits resulting from the efforts of an attorney;

224.2 (Continued)

(d) The reasonable and customary local charge for similar services; and

(e) The professional qualifications of the representative and the quality of representation afforded to employee.

224.3 An application for attorney fees shall contain the following:

(a) A complete statement of the extent and character of the necessary work done, described with particularly as to the professional status (e.g., attorney, paralegal, law clerk, or other person assisting an attorney) of each person performing the work;

(b) The normal billing rate in the area for the work; and

(c) The hours devoted by each person to each category of work.

224.4 In any case under §31(d) of the Act [§36-330(d), D.C. Code, 1981 ed.] where an attorney fee is awarded against a carrier or employer and there is an application made for witness fees and mileage charges as costs, the application shall be subject to approval in the same manner as an application for attorney fees.

224.5 An award of attorney fees made under §31 of the Act [§36-330, D.C. Code, 1981 ed.] shall not exceed twenty percent (20%) of the actual benefits secured through the efforts of the attorney, including any settlement provided for under the Act and this chapter.

224.6 No contract pertaining to the amount of an awardable attorney fee shall be recognized in reviewing any application for attorney fees under this Act.

224.7 An application for attorney fees may be filed in the Office within one (1) year after the compensation order after a claim has become final.

225 COMPENSATION ORDERS ISSUED WITHOUT A HEARING

225.1 The Director shall provide for review of a compensation order issued by the Office without a hearing in the manner set forth in §230 of this chapter.

225.2 All interested parties shaldl be notified of the decison of the Director and of their right to seek judicial review of the final agency action.

225.3 If a substantial question of law or fact prevents the Director from affirming, the compensation order shall be set aside and the case remanded to the Office for further development based on specific findings of deficiencies in the compensation order. On remand, the Office may receive additional evidence and shall issue a new compensation order addressing the specific deficiencies.

226 AGREED SETTLEMENTS

226.1 The Office may approve lump sum settlements agreed to by the interested parties if it is in the best interest of the injured employee entitled to the benefit in accordance with §9(h) of the Act [§36-308(f), D.C. Code, 1981 ed.].

226.2 In determining what is in the best interest of the injured employee, the Office shall consider all relevant factors including, but not limited to, the following:

(a) Whether there is a valid dispute regarding issues of compensability of a claim, extent of total or partial disability and other liability under the Act;

(b) The age of the claimant in relationship to vocational evaluation and entitlement;

(c) Whether claimant has reached maximum improvement from medical treatment; and

(d) Whether and why claimant has refused to undergo surgery to improve a medical condition; Provided, that religious considerations shall be a valid reason to forego surgery.

226.3 Under §9(h) of the Act [§36-308(f), D.C. Code, 1981 ed.], payment of lump sum may be in the form of a structured settlement if it is determined by the Office that the form of payment would be in the best interest of the injured employee.

226.4 Structured settlements may be considered for approval; Provided, that the negotiated settlement reflects the amount of money required to be invested and is shown in addition to the annuity to be paid.

226.5 Application for approval of lump sum settlement shall be completed in full and forwarded to the Office for review.

226.6 After review by the Office, a hearing on the merits of the request may be scheduled to hear argument on the positions of the interested parties and to achieve a clear understanding from all interested parties that if the settlement is approved, it becomes the final and complete settlement of the case and cannot be reopened for any future benefit.

227 OCCUPATIONAL DISEASE

227.1 In accordance with §11 of the Act [§36-310, D.C. Code, 1981 ed.] and §2(1) of the Act [§36-301(12), D.C. Code, 1981 ed.], the employer with the last known exposure shall be liable to pay compensation for occupational disease.

227.2 The employer shall not be liable for any occupational disease which results from a hazard to which the worker has had greater exposure outside of the employment.

227.3 Compensation for occupational disease shall be approved only in the following circumstances:

(a) The employee has been examined by a member of the medical panel and an evaluation made; and

(b) An investigation of the work environment has been performed on behalf of the Department to verify the conditions which caused the hazard.

228 SERVING, FILING AND POSTING

228.1 Whenever a document or notice is required to be served by the Office, the Office shall do the following:

(a) Hand deliver the document to each interested party and secure the signature of the recipient; or

(b) Mail the document by certified or registered mail, return receipt requested, to the last known address of each

228 SERVING, FILING AND POSTING (Continued)

228.1 (Continued)

(c) Retain a copy for the official record.

228.2 Whenever an interested party desires to file a document with the Office, the party shall do the following:

(a) Hand deliver the document to the Office and ensure that its receipt is acknowledged and logged in by the Office; or

(b) Mail the document by registered or certified mail, return receipt requested; and

(c) Send a copy to all interested parties by registered or certified mail.

228.3 If an interested party or the Office retains evidence that a document has been served or filed as set forth §§228.1 and 228.2, the receipt of the document shall be presumed; Provided, that the presumption of receipt may be rebutted by evidence to the contrary.

228.4 Whenever the Act or this chapter provides a time period during which an action is to be taken, unless otherwise expressly provided, the time period shall run from the actual receipt of a document.

228.5 Three (3) working days from mailing shall be presumed to be the normal time for registered or certified mail to actually be received.

228.6 All notices and documents required to be posted by employers shall be posted at or near the place of employment of jobsite. Posting shall be in a place where it can be seen and read by employees.

229 VOCATIONAL REHABILITATION

229.1 Under §8(e) of the Act [§36-307(a), D.C. Code, 1981 ed.], vocational rehabilitation services shall be provided by employers to injured workers who require such services.

229.2 Employers shall file vocational rehabilitation plans with the Associate Director for the Office of Workers' Compensation.

229.3 The Associate Director shall monitor vocational rehabilitation services to determine adequacy and, on his or her own motion, may cause an investigation to be made pursuant to §229.4.

229.4 An injured worker may make an application to the Associate Director for either the provision of vocational rehabilitation services or a change of service provider.

229.5 The application shall contain allegations and supporting information regarding the employer's failure or refusal to provide adequate and sufficient vocational rehabilitation services.

229.6 The Associate Director shall cause an investigation to be made to determine whether the employer is providing adequate and sufficient rehabilitation services. If such services are not being provided, the Associate Director shall require the employer to show good cause for the failure or refusal to provide the services.

229.7 The Associate Director shall serve on the employer, notice of the investigation pursuant to §229.6 of this section and a copy of any allegations and supporting information of the employer's failure or refusal to provide adequate or sufficient rehabilitation services.

229.8 Within twenty (20) days of receipt of the notice and allegations, the employer shall file with the Associate Director and the injured employee, a response accompanied by the exhibits and written argument as the employer considers relevant to a proper resolution of the matter.

229.9 Within twenty (20) working days after the employer responds, the Associate Director shall determine by order, whether the employer shall provide vocational rehabilitation services and if so, whether any such services already being provided are adequate and sufficient.

229.10 The Associate Director may order the provision of these services or a change in the provider of these services. The Associate Director, by agreement of all parties, may extend the time to issue such an order.

229.11 The Associate Director may, by written order, dismiss a frivolous or unsupported application of an employee after an investigation has been performed.

229.12 The order of the Associate Director, issued pursuant to §§229.7 and 229.9, shall become final unless a written request for a formal hearing is made to the Chief, Hearings and Adjudication Section within twenty (20) working days of the date of issuance.

229.13 Upon receipt of a request for a formal hearing, a hearing shall be conducted pursuant to §21(c) of the Act [§36-320(c), D.C. Code 1981 ed.].

229.14 Upon request by the Chief, Hearings and Adjudication Section, the order and complete file of the Associate Director shall be forwarded and made a part of the record.

229.15 The Associate Director shall, in his or her investigation of the adequacy and sufficiency of the vocational rehabilitation services provided to the injured worker, consider all questions concerning the provision of vocational rehabilitation services including, but not limited to, the following:

(a) The fact and degree of disability;

(b) The existence of a substantial handicap to employment; and

(c) The likelihood that vocational rehabilitation services will return the individual to employment commensurate with his or her abilities.

229.16 When, in the opinion of the Associate Director, medical reports are insufficient to determine the suitability of vocational rehabilitation services, the Associate Director may order an independent medical evaluation from a member of the panel of treating physicians and charge the employer for the associated costs or bill the Special Fund pursuant to §231.3 of this chapter.

230 ADMINISTRATIVE AND JUDICIAL REVIEW

230.1 In accordance with paragraph two of §23(b)(3) of the Act [§36-332(b)(2), D.C. Code, 1981 ed.], the Director shall review compensation orders raising substantial questions of law or fact.

230.2 Within thirty (30) days from the date that a compensation order is filed as provided in §21(e) of the Act [§36-320(e), D.C. Code, 1981 ed.], any party may seek the Director's review by filing with the Director two (2) copies of an application for review, a memorandum of points and authorities in support of the application and a certification that copies of the application and memorandum have been served, by mail or delivery, upon the opposing party and the Office.

230.3 The Office shall certify and deliver to the Director the original record of the proceeding within ten (10) days of receipt of an application for review.

230.4 A party opposing the application shall file a response within fifteen (15) days of receipt of the application for review.

230.5 The Director shall issue a final decision within forty-five (45) working days of of the date of application, unless a party shall have requested leave to adduce additional evidence and shown to the satisfaction of the Director that the additional evidence is material, and that there were reasonable grounds for the failure to adduce the evidence in the initial hearing before the Office.

230.6 If the Director determines that a party shall be granted leave to adduce additional evidence, then the case shall be remanded to the Hearing or Attorney Examiner.

230.7 On remand, the Hearing or Attorney Examiner shall hold a hearing to permit the presentation of the additional evidence, may modify his or her findings of fact and may modify or set aside his or her original order by reason of the modified or new findings of fact.

230.8 A party may apply for the Director's review of a new compensation order issued after remand, in the manner provided by this section for review of an initial compensation order.

230.9 The findings of fact in a compensation order under review shall be conclusive if supported by substantial evidence in the record, considered as a whole.

230.10 The Director may affirm an order or may set aside or suspend, in whole or in part, any order not supported by substantial evidence or not in accordance with the Act.

230.11 If a substantial question of law or fact prevents the Director from affirming, the compensation order shall be set aside and the case remanded to the Hearing or Attorney Examiner for further development based on specific findings of deficiencies in the compensation order.

230.12 In accordance with §23(b) of the Act [§36-322(b), D.C. Code, 1981 ed.], the effectiveness of a compensation order and the payment of any amounts required therein shall not be stayed pending review by the Director unless the Director so orders on the grounds that irreparable injury would otherwise enure to the employer.

230.13 A party in interest who is adversely affected by a final decision of the Director may file a petition for a review with the D.C. Court of Appeals within the time prescribed by the Rules of the Court.

231 SPECIAL FUND

231.1 The Associate Director for the Office of Workers' Compensation, or his or her designee, shall be the custodian of the Special Fund and, in administering the provisions of §41 of the Act [§36-340, D.C. Code, 1981 ed.], shall observe the customary duties and obligations of a fiduciary.

231.2 For purposes of this section, the term **"award"** means any final order issued under §21 of the Act [§30-320, D.C. Code, 1981 ed.] finding the employer liable for any of the following:

(a) Compensation benefits under §9 of the Act [§36-308, D.C. Code, 1981 ed.];

(b) Death benefits under §10 of the Act [§36-309, D.C. Code, 1981 ed.];

(c) Supplemental allowances under §7 of the Act [36-306, D.C. Code, 1981 ed.];

(d) Medical services and supplies under §8 of the Act [§36-307, D.C. Code, 1981 ed.]; and

(e) Attorneys' fees under §31 of the Act [§36-330, D.C. Code, 1981 ed.].

231.3 The term does not apply to any order finding an employer in violation of the discriminatory discharge provision of §43 of the Act [§36-342, D.C. Code, 1981 ed.].

231.4 Under §41(a) of the Act [§36-340(a), D.C. Code, 1981 ed.], payments may be made from the Special Fund for any of the following:

(a) For the provision of vocational rehabilitation services ordered by the office under §8(c) of the Act [36-307(c), D.C. Code, 1981 ed.;

(b) For the expenses of medical examinations required by the Office under §8(e) of the Act [§36-307(e), D.C. Code, 1981 ed.];

(c) For supplemental compensation benefits due an employee whose injury is a second injury under §9(f) of the Act [§36-308(d), D.C. Code, 1981 ed.]; and

(d) For the satisfaction of a judgment for an award, including reasonable medical expenses and attorney fees under §20(b) of the Act [§36-319(b), D.C. Code, 1981 ed.].

231.5 The Office may pay from the Special Fund, the medical expenses of an examination ordered by the Associate Director, pursuant to §8(e) of the Act [36-307(e), D.C. Code, 1981 ed.] and §212.19, only after making an unsuccessful demand upon the self-insured employer or the carrier to pay the expenses and only after determining either that the carrier or employer is insolvent or that it would further the interest of justice to make the payment from the Special Fund.

231.6 An employer liable for compensation payments in connection with a second injury may file with the Associate Director, an application for an order finding the Special Fund liable for supplemental compensation payments under §9(f) of the Act [§36-308(d), D.C. Code, 1981 ed.].

231.7 All issues of an employer's liability and the extent and nature of compensation payable under an approved claim shall be in final disposition prior to filing a request for relief for the second injury from the Special Fund.

231.8 Upon the filing of an application for an order finding the Special Fund liable for supplemental compensation benefits, the Associate Director shall investigate the matter to ensure, among other things, that there are no substantial matters in dispute and that the employer has made or is making appropriate payments to the disabled employee or beneficiary.

231.9 Within sixty (60) days following the filing of the application, the Associate Director shall issue an order which determines the liability of the Special Fund for compensation benefits; Provided, that the Associate Director may order the submission of additional evidence.

231.10 If additional evidence is ordered to be submitted pursuant to §231.9, the Associate Director shall issue an order within thirty (30) days of receipt of the evidence. The order shall state the reasons for its determination.

231.11 An employer aggrieved by an adverse determination, pursuant to §231.8, may request, within thirty (30) days, a formal hearing pursuant to §220 of this chapter.

231.12 An employer who has obtained an order finding the Special Fund liable for compensation payments for a second injury disability may file, on a quarterly basis, a request for reimbursement for compensation payments.

231.13 The request for reimbursement shall be in a manner prescribed by the Associate Director and shall be accompanied by invoices, payment records, cancelled checks or such other documents as the Associate Director may require.

231.14 The Associate Director may require any additional proof as he or she deems necessary to complete an investigation of the reimbursement request.

231.15 Upon completion of his or her review and within thirty (30) days of the receipt of the request for reimbursement, the Associate Director shall disburse from the Special Fund the payments to which he or she finds the employer entitled.

231.16 Under §20(b) of the Act [§36-319(b), D.C. Code, 1981 ed.], the Associate Director may make from the Special Fund, payments upon any award if the employer is insolvent and had defaulted. Special Fund payments may provide for necessary medical, surgical or other treatment required by §8 of the Act [§36-307, D.C. Code, 1981 ed.]

231.17 A claimant, beneficiary or attorney who has obtained an award and a judgment based thereon may apply for Special Fund payments pursuant to §20 of the Act [§36-319, D.C. Code, 1981 ed.].

231.18 The application for Special Fund payments pursuant to §231.17 shall be filed with the Associate Director within twenty-four (24) months of the date of the judgment together with a statement of the efforts made to enforce the judgment under §23(c) of the Act [§36-322(c), D.C. Code, 1981 ed.] and copies of the award, the declaratory supplementary default order, any mandatory injunction, and a certified copy of the judgment.

231.19 Upon receipt of the application for Special Fund payment, the Associate Director shall investigate the allegations contained in the application, the financial position of the employer or carrier, and such matters which the Associate Director deems necessary to a just decision.

231.20 Within twenty (20) working days of receipt of the application for Special Fund payment pursuant to §231.17, the Associate Director shall issue an order granting or denying the relief sought in the application.

231.21 In investigating any request for payments from the Special Fund under this section, the Associate Director is authorized under §30(a) of the Act [§36-329(a), D.C. Code, 1981 ed.] to issue any orders, subpoenas, interlocutories, or other process to any person as may be necessary to discharge his or her duties.

299 DEFINITIONS

299.1 The definitions found in §2 of the Act [§36-301, D.C. Code, 1981 ed.], shall apply to this chapter. In addition, the following terms shall have the meaning ascribed:

Act - the District of Columbia Workers' Compensation Act, as amended, (D.C. Law 3-77, effective July 1, 1980, §36-301 et seq., D.C. Code, 1981 ed.).

Beneficiary - the surviving spouse, children or other relatives set forth in §10(d) of the Act [§36-309(4), D.C. Code, 1981 ed.] of an employee whose job related injury results in death and shall include any person claiming to be entitled to compensation for the death of an injured employee.

Benefits - compensation for death, wage loss, medical and hospital treatment, and vocational rehabilitation provided pursuant to the Act.

Binder - an agreement, or memorandum thereof, whereby an agency or carrier undertakes to provide coverage to an employer pending filing of notice of coverage with the Office.

Claim - an application for benefits made by an injured employee or his or her beneficiary under §§9 and 10 of the Act [§§36-308 and 36-309, D.C. Code, 1981 ed.].

Claimant - an individual who files a claim for benefits under §9 of the Act [§36-308, D.C. Code, 1981 ed.]

Council - the Mid-Atlantic Council on Compensation Insurance, 305 W. Chesapeake Avenue, Baltimore, Maryland 21264, an agency of the National Council on Compensation Insurance, One Penn Plaza, New York, N.Y. 10119, one of whose functions is to assign involuntary coverage to an employer for which coverage cannot be obtained on a voluntary basis in accordance with a voluntary plan.

Compensation Order - an order of a Hearing or Attorney Examiner of the Office which rejects a claim or which makes an award of compensation in respect of a claim under the Act.

Coverage - an insurance or other securities to secure the payment of benefits to the employees of employers as defined in this section.

Day - a calendar day, unless otherwise specified in the Act or this chapter.

Department - the Department of Employment Services.

Director - the Director of the District of Columbia Department of Employment Services or his or her designated agent.

Establisment - the place where the activities of an enterprise are conducted.

Hearing - the formal adjudicative process conducted by a Hearing or Attorney Examiner in accordance with the District of Columbia Administrative Procedure Act [§1-1501 et seq., D.C. Code, 1981], and the Act.

Identification Number - the employer's numerical designation of an establishment assigned by the Federal Government.

Insurer - a "carrier" as defined in §2(c) of the act or a self-insured employer.

Interested Party - the District of Columbia, and an employer, a carrier, an employee, or a beneficiary whose rights or obligations pursuant to a claim under the Act shall be determined in a particular proceeding.

Injury - an injury as defined in §2(1) of the Act [§36-301(12), D.C. Code, 1981 ed.], which combined with a previous occupational or non-occupational disability or physical impairment causes substantially greater disability or death.

Maintenance Expense - an additional payment (not to exceed fifty dollars ($50) a week) made under §8(a) of the Act [§36-307(a), D.C. Code, 1981 ed.], by an employer to an injured employee which the Office has determined is necessary for the maintenance of an employee undergoing vocational rehabilitation.

Medical Services and Supplies - a medical, surgical, vocational rehabilitation services (including necessary travel expenses and other attendance or treatment), nurse and hosptial service, medicine, crutches, false teeth or the repair thereof, and any artificial or prosthetic appliance.

Occupational Disease - a disease or infection generally recognized by the medical profession as a disease or infection arising naturally out of a particular employment. The term includes, but is not limited to, pneumoconiosis, silicosis, asbestosis, and radiation diseases.

Office - the Private Sector Branch of the Office of Workers' Compensation in the Labor Standards Division of the Department of Employment Services.

299.1 (Continued)

Physician - a person duly licensed as a medical doctor, dentist, podiatrist, or osteopath who mets the following requirements:

(a) Has graduated from an approved or accredited medical college, dental college, college of podiatry or college of osteopathic medicine, or if the college is not located within the United States, then from an institution approved by the appropriate examining and licensing authorities within the respective foreign jurisdictions;

(b) Has met all examination and licensing requirements of the state or jurisdictional medical board;

(c) Is board eligible in a particular speciality or has completed an internship and one (1) year of residency at an accredited hospital or, if licensed to practice more than (10) years, has completed a one (1) year internship;

(d) Would qualify for, or has hospital privileges; and

(e) Is authorized by law to prescribe controlled substances and to make surgical interventions on the body.

Poster - the employer's notice of compliance with the Act, prescribed by the Department, which is to be conspicuously posted for the information of all employees in accordance with §37 of the Act [§36-336, D.C. Code, 1981 ed.].

Reinstatement - the restoring of coverage to effective status.

Self-insurer - an employer who has supplied satisfactory proof of financial ability to pay and has been authorized under §35(a)(2) of the Act [§36-334(a)(2), D.C. Code, 1981 ed.] and §217 of this Chapter to pay compensation for disability or death benefits directly to a claimant or beneficiary instead of securing insurance coverage through a carrier.

Termination - the cessation of coverage for one of the reasons set forth in §216.8 of this chapter.

Working Days - the District of Columbia Government business days, excluding Saturdays, Sundays and legal holidays.

Vocational Rehabilitation Services - those services required to return an injured employee to the near possible pre-injury condition. These services may include the following: vocational counseling and evaluation, occupational and career counseling, retraining and job skills development, and job placement.